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Reviews

THE LIFE OF BLACKSTONE, by Lewis C. Warden. Michie Co., Charlottesville, 1938. Pp. xiv, 407. \$5.00.

Lord Macmillan was unfortunately not mistaken when he wrote in the *Empire Review* of February, 1926 that:

"The Judges of England, for the most part, have been unfortunate in their biographers, and perhaps not least so when they have attempted autobiography. There is no doubt a distinguished exception to the rule in Atlay's *Victorian Chancellors*. But most of the judicial 'Lives' on our shelves exhibit all the dullness of uninspired propriety. . . . An anonymous critic of Lord Campbell's famous work, after a devastating onslaught upon the unhappy author, puts in this damning plea in mitigation: 'a charming style, a vivid fancy, exhaustive research were not to be expected from a hardworked barrister'."

Since Lord Macmillan drew up his scathing indictment several biographies of distinguished jurists have been brought out in England and America. Attention may be fixed here upon but four. The intimate personal ties which linked Lord Mansfield to Sir William Blackstone and Mr. Justice Brandeis to Mr. Justice Cardozo dictate the selection which should be made. These four volumes emphasize the difference between the eighteenth century and the twentieth.

It is more than strange that such outstanding figures as Lord Mansfield and Sir William Blackstone should have filled so small a place in the literature of English law. Since Lord Campbell's soporific life of the former, with the exception of a recent work no attempt had been made to estimate his achievements. Outside of the brief statements in various editions of his *Commentaries* and a *Biographical History* which appeared two years after his death, the latter's career had until now passed similarly unnoticed.¹

The biography of Lord Mansfield is by C. H. S. Fifoot. It runs to only about 95,000 words but it throws upon the screen an unmistakably clear picture of the great jurist. Its prologue arrests

1. At the time of writing, another biography of Blackstone by David A. Lockmiller had just been announced but was not yet available for consideration in this review.

attention, and prepares the setting for a well-balanced essay in judicial biography. All the faults which marred Lord Campbell's biography and upon which Lord Macmillan touches so deftly, are here replaced by a charming style, a vivid fancy and exhaustive research. Mr. Fifoot does not seek to convert himself into a psychoanalyst and to tell his reader how Lord Mansfield's mind worked when resting in peaceful slumber. On the contrary, he attempts to reveal the jurist's personality through the medium of his judgments and to set it in perspective against the background of the eighteenth century. Separate chapters are devoted to his reforms in Procedure and Evidence, to his rationalization of Commercial Law and Quasi-Contracts, and to his contest with orthodox views in Contracts and Property. Such an approach to its theme necessarily restricts this volume's popular appeal. Its message is, however, primarily addressed to the legal profession. An opportunity is thus afforded to those to whom Lord Mansfield will ever be an inspiration and a leader to examine his judicial technique and to estimate his influence on the future development of the law.

Mr. Warden, in assigning to himself the task of preparing the present *Life of Blackstone*, prefers, as he sets forth in his Preface, "to write a book that would appeal to the general public as well as to lawyers." And he adds, "to that end I have employed the most picturesque style that I could call to my use." No task could have been more difficult than this self-imposed burden. It obviously placed the author in imminent danger of constantly falling between two stools. And considering the additional circumstance that his audience necessarily extends to England, he unwittingly invited British criticisms that he could readily have avoided had he been more circumspect.

Americans who read this biography of Blackstone will overlook certain aspects of the author's style which bespeak an obvious attempt at popularizing his narrative. Englishmen, it is feared, will be less generous critics. They will be prone, for example, to take this salient paragraph and tear it to pieces:

"It was the custom in London at that time for the lawyers to live in their Inns unless of course they had taken unto themselves a wife, in which case they lived in an established home, which however wasn't far distant from their Inns. Wife-taking for the members of the Bar in the Eighteenth Century was considered a very unusual privilege and an attorney ordinarily re-

garded himself fortunate if he got around to it by the mid-afternoon of life. Thus most of the lawyers were bachelors and many of them never did get to the altar. As Mansfield noted the great majority of them had mistresses, 'whom,' says Mackinnon, 'the attorneys were supposed to marry if and when they became benchers (judges)'. Even if the attorney had wedded still he remained a member of his Inn, which he frequented often, much as a rotarian does his club, for 'mingling with the boys'.²

To English barristers an Inn of Court is an institution far too sacred to be polluted by "lawyers" and "attorneys." In their vocabulary, these are terms of opprobrium or, at all events, of disdain, which they do not apply to themselves but to solicitors. And benchers are not judges—as the parenthesis in the text brings out—but they are members of the bar. They, as Lord Halsbury expresses it, "decide all questions relating to the fitness, other than intellectual, of students to be called, and exercise a disciplinary power over all their members."³

If Mr. Warden's American background has made him attach to the old world frame of his work less importance than Englishmen will consider prerequisite to a biography of so characteristically English a jurist as Sir William Blackstone, Americans will readily condone a setting which Britons will be prone to exaggerate. They will approach this study from the viewpoint of Blackstone's part in making the Common Law a distinctly American heritage. They will find in these pages interesting sidelights upon the career of the Great Commentator. And they will, last but not least, feel grateful to the author for having devoted so much thought to so inspiring a theme.

The *Life of Brandeis*⁴ is, as its subtitle clearly indicates, *The Personal History of an American Ideal*. It is not strictly speaking a biography. It is a successful attempt at setting forth the evolution of American political consciousness. Such an approach to his problem greatly facilitates Mr. Lief in avoiding those pitfalls which wrecked the efforts of so many biographers of the leaders of bench and bar.

Dr. Levy's task, in preparing his *Cardozo and the Frontiers*

2. P. 75.

3. 2 Halsbury, *Laws of England* (1st ed. 1908) Vo. Barristers § 608.

4. Lief, Brandeis: *The Personal History of an American Ideal* (1936).

of *Legal Thinking*⁵ was greatly facilitated by the circumstance that he, a professor of philosophy, centered his attention primarily upon an analysis of Cardozo's thought processes. This means that the philosopher-judge, Benjamin Cardozo, found a biographer who was a specialist in a domain which is not, technically considered, that of the law. And, of course this is but another way of saying that in these pages the lawyer and the jurist are somewhat subordinated to the thinker and the intellectual pathfinder. "The author," as a distinguished reviewer puts it, "shows Cardozo throwing aside the mysterious veils that surround judges and revealing frankly a group of learned but troubled humans who must make the law as well as declare it, who have it in their power to forward or retard human progress. . . ."⁶

It is regrettable that with Dr. Levy's analysis of Cardozo's mind running in this direction he makes almost no reference to the great lawsuits of recent years. It would have added to the human interest of his pages had he drawn a picture of Cardozo's mind in action during that epoch-making period. The circumstance that he preferred not to do so perhaps adds to the philosophical serenity of his work. The regret which it evokes but emphasizes the praise which should be given to his incursions into domains which were not "taboo" to his love of tranquility.

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THE ADMINISTRATION OF FEDERAL GRANTS TO STATES, by V. O. Key, Jr. Public Administration Service, Chicago, 1937. Pp. 388. \$3.75.

THE RISE OF A NEW FEDERALISM: FEDERAL-STATE COOPERATION IN THE UNITED STATES, by Jane Perry Clark. Columbia University Press, New York, 1938. Pp. xvii, 347. \$3.50.

These books, each the product of subsidized research, are designed for the student of political science and public administration rather than for the practicing lawyer. While each carries some commentary on constitutional and statutory problems which govern state-federal relationships, comment of a strictly legal

5. Levy, *Cardozo and the Frontiers of Legal Thinking* (1938).

6. Pollard, Book Review, *N. Y. Times*, Sept 4, 1938, p. 5.

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